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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID SLACK, individually, and on behalf of all others similarly situated, *et al.*

Case No.: 3:13-cv-05001-EMC

Plaintiffs,

CLASS ACTION

VS

INTERNATIONAL UNION OF
OPERATING ENGINEERS, a trade union, *et
al*

**STIPULATION REQUESTING
CONTINUANCE OF DECEMBER 18,
2014 CASE MANAGEMENT
CONFERENCE**

Defendants.

1 TO THE COURT, TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

2 This Stipulation is submitted pursuant to Local Rule 6-2 and is entered into by and between
3 all Plaintiffs and all Defendants (collectively, the “Parties”) for the purpose of efficiently managing
4 this litigation involving numerous parties and complex issues.

5 1. The original Complaint in this matter was filed on October 27, 2013.

6 2. On November 1, 2013, the Court issued its Case Management Conference Order in
7 Reassigned Cases (Dkt. No. 10) scheduling the initial Case Management Conference (“CMC”) on
8 January 30, 2014 at 9:00 a.m. and directing that the Parties file a Joint CMC Statement one week in
9 advance.

10 3. Plaintiffs filed a First Amended Complaint (“FAC”) on January 27, 2014 (Dkt. No.
11 29).

12 4. After Motions to Dismiss were filed, on May 29, 2014, pursuant to stipulation, the
13 Court ordered a continuance of the CMC from June 19, 2014, to July 24, 2014, and the Case
14 Management Statement of the Parties was ordered due by July 17, 2014 (Dkt No. 154).

15 5. The hearing on Rule 12 Motions directed at the FAC was held on July 10, 2014
16 before the Court, after which the Court took the Rule 12 Motions under submission (Dkt. No. 171).
17 Pursuant to the Clerk’s Notice dated July 11, 2014, the CMC scheduled for July 24, 2014, was
18 continued to August 14, 2014, and the Case Management Statement of the Parties was ordered due
19 by August 7, 2014 (Dkt. No. 172).

20 6. On July 25, 2014, pursuant to stipulation, the Court ordered a continuance of the
21 CMC from August 14, 2014 to September 18, 2014. (Dkt. No. 175).

22 7. On August 19, 2014, the Court entered its Order Granting Defendants’ Motions to
23 Dismiss with Leave to Amend (Dkt. No. 176).

24 8. On September 2, 2014, pursuant to stipulation, the Court ordered a continuance of
25 the CMC from September 18, 2014 to December 4, 2014. (Dkt. No. 178).

26 9. Plaintiffs filed their Second Amended Complaint (SAC) on October 20, 2014. (Dkt.
27 No. 179).

1 10. On November 13, 2014, the parties held their Fed. R. Civ. P. 26 conference of
 2 counsel.

3 11. During and after the November 13, 2014 conference of counsel, the parties
 4 expressed substantial disagreement regarding the timing and scope of discovery and initial
 5 disclosures while some of the claims in the SAC are unresolved. Defendants initially objected to
 6 the commencement of all discovery prior to the resolution of their intended motion to dismiss
 7 portions of the SAC. Plaintiffs argued that the Federal Rules of Civil Procedure specify event
 8 timing that essentially assumes the likelihood that discovery will commence before the pleadings
 9 are entirely settled in a case. In response, Defendants argued that courts are empowered to manage
 10 the scheduling of discovery to prevent undue burden and stated that they would likely move to stay
 11 all or a portion of discovery -- particularly with respect to claims contested in the pending Joint
 12 Motion to Dismiss -- to avoid such undue burden. The parties continued to negotiate towards a
 13 resolution of the impasses in order to complete their Joint Report. Ultimately, during the week of
 14 December 9, 2014, the parties agreed to limit written discovery and depositions to Longview-based
 15 issues, which are addressed in SAC Claims for Relief One and Two (and those general background
 16 matters that would be appropriate subjects of inquiry for any claim in this matter) and agreed on a
 17 staged approach to initial disclosures. Plaintiffs' agreement to compromise was expressly
 18 contingent upon confirmation at that the Court would not view the lack of formal discovery on
 19 other claims at this time as a lack of diligence by Plaintiffs.

20 12. Once the parties reached an agreement to utilize a staged approach to discovery and
 21 disclosures, the parties agreed that it did not make sense to hold a CMC solely to advise the Court
 22 that a further CMC should be held after resolution of Defendants Joint Motion to Dismiss portions
 23 of the SAC, when the Court and parties would have more information about how the case would
 24 proceed and which claims would be at issue. The parties also recognized that the potential for class
 25 claims called into question the setting of a fixed schedule until the pleadings challenges directed at
 26 the SAC are settled.

27 13. On November 14, 2014, the Court continued the CMC to December 18, 2014. (Dkt.
 28 183.)

14. On December 5, 2014, Defendants filed their Joint Motion to Dismiss the SAC. (Dkt. No. 187). By Stipulation of the parties, that Motion to Dismiss will be heard on February 19, 2015. (Dkt. Nos. 180, 182, 184, 186.)

15. The parties are completing the final version of their Joint Report, which should be filed shortly after this Stipulation is filed with the Court. This Stipulation could not be filed sooner than December 11, 2014, because the parties did not resolve all issues that arose during preparation of the Joint Report until December 11, 2014.

16. Accordingly, the Parties now respectfully ask the Court to continue the CMC presently set for December 18, 2014, until March 19, 2015, twenty-eight days after the hearing on the Joint Motion to Dismiss portions of the SAC. The parties will update their Joint Report to the extent that circumstances discussed therein have changed and propose filing any Amended Joint Report, if needed, seven calendar days prior to the date of the CMC.

17. This Stipulation is not offered for any dilatory or improper purpose, but rather solely to effectively manage the scheduling of case events and to ensure the most efficient use of resources by the Court, the Parties, and their counsel.

WHEREFORE, subject to the Court's approval, Plaintiffs and the Defendants, desiring to efficiently manage this complex matter, hereby stipulate to a continuance of the CMC and related deadlines until March 19, 2015 or a date thereafter convenient for the Court's calendar.

Respectfully submitted,

Dated: December 11, 2014

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By: J. S. Linnan
J. Mark Moore

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1 Dated: December 11, 2014

LAW OFFICE OF KENNETH C. ABSALOM

2 By: /s/ George Nemiroff

3 Kenneth C. Absalom

4 George R. Nemiroff

5 Attorneys for Defendants Russell E Burns, Dan
6 Reding, Carl Goff, Pete Figueiredo, and Steve
7 Ingersoll

8 Dated: December 11, 2014

COX, CASTLE & NICHOLSON LLP

9 By: /s/ Dwayne McKenzie

10 Dwayne McKenzie

11 Attorneys for Defendants Kevin J. Albanese, F.G.
12 Crosthwaite, Thomas Holsman, John M. Humber,
13 Richard Piombo

ECF CERTIFICATION

Pursuant to Local Rule 5-1(i)(3), the filing attorney attests that he has obtained concurrence regarding the filing of this document from the signatories to the document.

Dated: December 11, 2014

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ORDER

Pursuant to the Stipulation of counsel and for good cause shown, IT IS HEREBY ORDERED that the case management conference is continued to 3/19/15 at 10:30 a.m. updated joint CMC Statement shall be filed by 3/12/15.

IT IS SO ORDERED.

Dated: 12/12, 2014

